

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO. 172 OF 2016

IN

SUIT NO. 212 OF 2014

Smt.Pramila Laxmilal Jain & Ors.	...Plaintiffs/Applicants
vs.	
Enclave Hospitality Pvt.Ltd. & Ors.	...Defendants
and	
M/s.Sunteck Realty Ltd. & Anr.	...Respondents

Ms.Arya Bile I/b. Solomon & Co. for Plaintiffs.

Mr.Sanjay Kothari I/b. Avinash V. Joshi for Defendant No.1.

CORAM : S.C. GUPTE, J.

DATE : 12 OCTOBER 2018

P.C. :

Heard learned Counsel for the parties.

2 This chamber summons is taken out by the original Plaintiffs for impleadment of Respondent Nos.1 and 2 to the present notice of motion as Defendant Nos.5 and 6.

3 The present suit is filed for a declaration that the Plaintiffs are joint owners of the suit property and have an undivided share, right, title and interest in the same and that the transfer of the suit property as between Defendant Nos.1 and 6, Gurunanak Dham Co-operative Housing Society, who was the original owner of the suit property and of which the Plaintiffs herein were members, should be declared as null and void and not binding on the Plaintiffs. There are interlocutory proceedings in the

suit, which have finally resulted in an order passed by the Supreme Court on 10 July 2017. By this order, which was passed by consent of the original parties to the suit, namely, the Plaintiffs herein and Defendant No.1, Defendant No.1 was required to give an equal area, which was in occupation of the Plaintiffs, to them after construction is made. This was to be given in a commercial building to be constructed by Defendant No.1 on the suit property. Further directions were given by the Supreme Court in the order *inter alia* regarding the plan of construction.

4 It is the Plaintiffs' case in the present chamber summons that in or about August 2015, i.e. before the filing of the chamber summons, certain hoardings and advertisements came to their notice in which Respondent No.1 herein had represented themselves to be promoters of a development project on the suit property. On a communication addressed by the Plaintiffs herein to Respondent No.1 in connection with this development, a copy of the development agreement executed between Defendant No.1 herein and Respondent No.2 to the notice of motion was furnished to the Plaintiffs. The development agreement showed that Defendant No.1 had granted development rights for construction of the commercial complex in the suit property to Respondent No.2. Respondent No.2 was shown as developer in this agreement. In these facts, the Plaintiffs have filed the present chamber summons seeking to implead both Respondent Nos.1 and 2 as party Defendants to the suit based on a transaction as between Defendant No.1 and Respondent Nos.1 and 2, which, according to the plaintiffs, prejudicially affects their rights and interest in the suit.

5 The chamber summons is opposed by learned Counsel for Defendant No.1, who also appears for Respondent Nos.1 and 2. Learned Counsel submits that Respondent Nos.1 and 2 are in no way concerned with the entitlement of the Plaintiffs. Learned Counsel submits that under the agreement between Defendant No.1 and Respondent No.2, 45% of the commercial area will be handed over to Defendant No.1, the latter merely retaining 55% developed commercial area. Learned Counsel submits that the commercial premises to be handed over to the Plaintiffs in terms of the Supreme Court order referred to above, can always be given from 45% of the developed area coming to the share of Defendant No.1. Learned Counsel submits that he is willing to make a statement to that effect and that, in the premises, there is no need to join Respondent Nos.1 and 2 as party Defendants to the present suit. Besides, learned Counsel submits that the development agreement is between Defendant No.1 and Respondent No.2 and Respondent No.1, who is the holding company of Respondent No.2, has no right under the agreement.

6 In every suit, the plaintiff, who approaches the court with a claim, is the *dominus litis*. It is for the plaintiff to choose his defendants. If it is the case of the plaintiff that he has a right to assert against an existing defendant and that right is infringed or affected by a subsequent transaction as between the existing defendant and a third party, the plaintiff can always apply for impleadment of such third party as a party to his suit so as to seek an appropriate relief against such third party concerning his rights. That the premises to be handed over to the Plaintiffs in view of the order of the Supreme Court can come from the developed area coming to the share of Defendant No.1 is a matter of defence so far as

Defendant No.1 is concerned. So also, that Respondent No.1, as holding company of Respondent No.2 or otherwise, has no concern with the development of the suit property, is a matter of defence for Respondent No.1. So far as the amendment application is concerned, the court has to go by the Applicants' case for joinder. The Applicants' case before the court is that the suit property, in respect of which the Plaintiffs have filed the present suit, is being claimed for development by a third party pending the suit. In that case the Plaintiffs would be perfectly within their rights to arraign such party as a defendant to their suit. The rest is a matter for the Defendants, including the newly added Defendants, to defend at the trial of the suit.

7 In the premises, the Plaintiffs have clearly made out a case for joinder of Respondent Nos.1 and 2 as party defendants to the suit. The chamber summons is accordingly made absolute in terms of prayer clauses (a), (b) and (c). Amendment to be carried out within two weeks.

(S.C. GUPTE, J.)